

FILED

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HARRY ELLEN DUNLAP
CLERK OF SUPERIOR COURT

BY JB

1 **SCHMIDT, SETHI & AKMAJIAN**

2 1790 East River Road, Suite 300

3 Tucson, Arizona 85718

4 FAX: (520) 790-1163

5 Dev K. Sethi

6 PCC #65271, SB# 018913

7 Direct Line: 520.545.1663

8 E-Mail: dsethi@azinjurylaw.com

9 Matthew F. Schmidt, SB# 028049

10 Direct Line: 520.545.1677

11 E-mail: mschmidt@azinjurylaw.com

12 Attorneys for Plaintiff

13 **SUPERIOR COURT FOR THE STATE OF ARIZONA**

14 **IN AND FOR THE COUNTY OF COCHISE**

15 THOMAS ABRUZZO, natural father on
16 behalf of ASHLEY ABRUZZO AND
17 KRISTA ABRUZZO, minors,

18 Plaintiffs,

19 vs.

20 SIERRA VISTA UNIFIED SCHOOL
21 DISTRICT, a political subdivision of the
22 state of Arizona; DAVID F. FALCON and
23 JANE DOE FALCON, husband and wife;

24 Defendants.

No. CV201800043

**MOTION TO REINSTATE
DISMISSED CASE**

Assigned to: Charles A. Irwin, Div. 1

25 Plaintiff, by and through undersigned counsel and pursuant to Rule 60(c), Arizona
26 Rules of Civil Procedure, hereby moves this court to reopen this case. The matter having
been dismissed in its entirety on September 18, 2018, Plaintiff requests that the case be
reinstated for the following reasons:

This case was dismissed for failure to file the Joint Report and Proposed

1 Scheduling Order. Counsel prepared the Joint Report and Proposed Scheduling Order
2 and it was approved by counsel for Defendant, but due to an administrative oversight in
3 the undersigned counsel's office, the final documents were not filed with the Court.
4 Please see Declaration of Melanie G. Montenegro, Exhibit 1.

5
6 The parties' Joint Report and Proposed Scheduling Order are attached as Exhibits
7 2 and 3, respectively.

8 Defendant Sierra Vista Unified School District has no objection to this Motion.

9
10 DATED this 24th day of September, 2018.

11 SCHMIDT & SETHI & AKMAJIAN

12 

13 Dev K. Sethi
14 Matthew F. Schmidt
Attorneys for Plaintiff

15 Original filed the Clerk this 24th day of September, 2018
16 Copies mailed to:

17 Matthew W. Wright
18 Christopher Welker
19 WRIGHT WELKER & PAUOLE, PLC
10429 S. 51st Street, Suite 285
20 Phoenix, AZ 85044
Attorney for Sierra Vista Unified School District

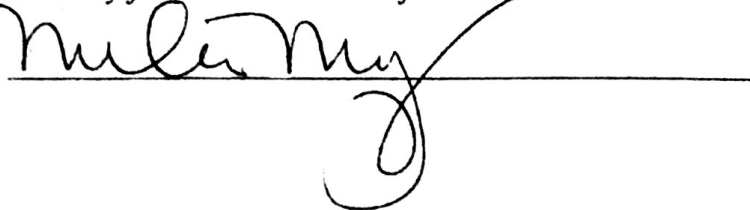
21 
22
23
24
25
26

Exhibit 1

1 **SCHMIDT, SETHI & AKMAJIAN**

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No. CV201800043

25 **DECLARATION OF**
26 **MELANIE G. MONTENEGRO**

Assigned to: Charles A. Irwin, Div. 1

Melanie G. Montenegro declares as follows:

1. I am a Legal Assistant at Schmidt Sethi & Akmajian.
2. I am responsible for filing pleadings with Cochise County Superior Court in the above-captioned matter.

3. Beginning August 13, 2018, electronic filing was established in Cochise County Superior Court through TurboCourt.

4. I attempted to file the parties' Joint Report and Proposed Scheduling Order on August 13, 2018, August 21, 2018 and August 30, 2018, each time receiving a warning that the case number could not be retrieved due to technical issues. I gave it time in between attempts in order to provide enough time to correct the technical issues.

5. Each attempt prompted a call to the AOC Support Desk, which I did. AOC was unable to assist and referred me to Cochise County Superior Court. When I called Cochise County Superior Court, they told me that there was nothing wrong with the case number and I was referred back the AOC Support Desk.

6. On September 24, 2018, after discovering that this matter had been dismissed, I called the Cochise County Superior Court and was informed that documents could not be filed electronically in this matter because there were minors involved. I did not have this information previously.

7. I failed to timely file a Joint Report and Proposed Scheduling Order with the Clerk because I failed to continue my follow up with the Court regarding technical issues cited on TurboCourt website prior to the dismissal deadline.

DATED this 24th day of September, 2018.



Melanie G. Montenegro

Exhibit 2

1 **SCHMIDT, SETHI & AKMAJIAN**

2 1790 East River Road, Suite 300

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21 DISTRICT, a political subdivision of the
22 state of Arizona; DAVID F. FALCON and
23 JANE DOE FALCON, husband and wife;

24 Defendants.

No. CV201800043

JOINT REPORT

Assigned to: Charles A. Irwin, Div. 1

25 The parties signing below certify that they have conferred about the matters set
26 forth in Rule 16(d), and that this case is not subject to the mandatory arbitration
provisions of Rule 72. With regard to matters upon which the parties could not agree,
they have set forth their positions separately in item 14 below. The parties are
submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint
Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

1 The parties signing below certify that they have conferred about the matters set forth
2 in Rule 16(d), and that this case is not subject to the mandatory arbitration provisions of
3 Rule 72. With regard to matters upon which the parties could not agree, they have set
4 forth their positions separately in item 14 below. The parties are submitting a Proposed
5 Scheduling Order with this Joint Report. Each date in the Joint Report and in the
6 Proposed Scheduling Order includes a calendar month, day, and year.

7
8 **1. Brief description of the case:** This is a Negligence case arising out of
9 inappropriate contact between David Falcon and the minor Plaintiffs. Falcon was
10 employed as a Sierra Vista Unified School District bus driver at the time.

- 11 • If a claimant is seeking other than monetary damages, specify the relief sought:
12 none.

13 **2. Current case status:** Every defendant has been served or dismissed. ☒ yes ☐ no
14 • Every party who has not been defaulted has filed a responsive pleading. ☐ yes
15 ☒ no
16 • Explanation of a "no" response to either of the above statements: Efforts are
17 ongoing to obtain a responsive pleading from Defendant Falcon, who is
18 incarcerated.

19 **3. Amendments:** A party anticipates filing an amendment to a pleading that will add a
20 new party to the case: ☐ yes ☒ no

21 **4. Special case management:** Special case management procedures are appropriate: ☐
22 yes ☒ no
23 If "yes," the following case management procedures are appropriate because:
24 _____

25 **5. Settlement:** The parties agree to engage in settlement discussions with ☐ a
26 settlement judge assigned by the court, or ☒ a private mediator.

The parties will be ready for a settlement conference or a private mediation by
December 1, 2018.

If the parties will not engage in a settlement conference or a private mediation, state
the reason(s):

1 6. **Readiness:** This case will be ready for trial by March 29, 2019.

2 7. **Jury:** A trial by jury is demanded. ☒ yes ☐ no

3 8. **Length of trial:** The estimated length of trial is 6 days.

4 9. **Summary jury:** The parties agree to a summary jury trial. ☐ yes ☒ no

5 10. **Preference:** This case is entitled to a preference for trial pursuant to the following
6 statute or rule:
7 _____

8 11. **Special requirements:** ☐ At a pretrial conference or ☐ at trial, a party will require

9 ☐ disability accommodations (specify) _____

10 ☐ an interpreter (specify language) _____

11 12. **Scheduling conference:** The parties request a Rule 16(d) scheduling conference. ☐
12 yes ☒ no

13 If requested, the reasons for having a conference are
14 _____

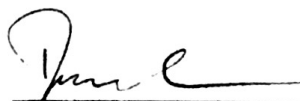
15 13. **Other matters:** Other matters that the parties wish to bring to the court's attention
16 that may affect management of this case:
17 _____

18 14. **Items upon which the parties do not agree:** The parties were unable in good faith to
19 agree upon the following items, and the position of each party as to each item is as
20 follows:
21 _____

22 DATED this 24th day of September, 2018.

23 SCHMIDT & SETHI & AKMAJIAN

24 WRIGHT WELKER & PAUOLE, PLC

25 

26 

Dev K. Sethi
Matthew F. Schmidt
Attorneys for Plaintiff

Matthew W. Wright
Christopher Welker
Attorneys for Sierra Vista Unified School
District

1 Original e-filed this 24th day of September, 2018

2 Copies mailed to:

3 Matthew W. Wright

4 Christopher Welker

5 WRIGHT WELKER & PAUOLE, PLC

6 10429 S.51st Street, Suite 285

7 Phoenix, AZ 85044

8 *Attorney for Sierra Vista Unified School District*

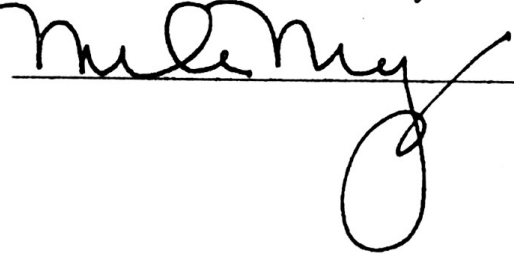
9 A handwritten signature in black ink, appearing to read 'Christopher Welker', is written over a horizontal line. The signature is cursive and extends below the line with a large loop.

Exhibit 3

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21 DISTRICT, a political subdivision of the
22 state of Arizona; DAVID F. FALCON and
23 JANE DOE FALCON, husband and wife;

24 Defendants.

No. CV201800043

PROPOSED SCHEDULING ORDER

Assigned to: Charles A. Irwin, Div. 1

25 Upon consideration of the parties' Joint Report, the court orders as follows:

26 1. **Initial disclosure:** The parties have exchanged their initial disclosure statements.

2. **Expert witness disclosure:**

Parties shall disclose areas of expert testimony by **August 31, 2018**,

Plaintiff shall disclose the identity and opinions of experts by **September 28, 2018**.

1 Defendant shall disclose the identity and opinions of experts by **November 16,**
2 **2018.**

3 The parties shall simultaneously disclose their rebuttal expert opinions by
4 **December 14, 2018.**

5 3. ***Lay (non-expert) witness disclosure:*** The parties shall disclose all lay witnesses by
6 **October 1, 2018.**

7 4. ***Final supplemental disclosure:*** Each party shall provide final supplemental
8 disclosure by January 18, 2019. This order does not replace the parties' obligation
9 to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes
10 available.

11 **No party shall use any lay witness, expert witness, expert opinion, or exhibit at
12 trial not disclosed in a timely manner, except upon order of the court for good
13 cause shown or upon a written or an on-the-record agreement of the parties.**

14 5. ***Discovery deadlines:*** The parties will propound all discovery undertaken pursuant
15 to Rules 33 through 36 by **October 1, 2018.** The parties will complete the
16 depositions of parties and lay witnesses by **December 1, 2018** and will complete the
17 depositions of expert witnesses by **January 25, 2019.** The parties will complete all
18 other discovery by **January 25, 2019.** ("Complete discovery" includes conclusion
19 of all depositions and submission of full and final responses to written discovery.)

20 6. ***Settlement conference or private mediation:*** [choose one]:

21 ☐ **Referral to ADR for a settlement conference:** The clerk or the court will issue a
22 referral to ADR by a separate minute entry.

23 ☒ **Private mediation:** The parties shall participate in mediation using a private
24 mediator agreed to by the parties. The parties shall complete the mediation by
25 **December 1, 2018.** All attorneys and their clients, all self-represented parties, and
26 any non-attorney representatives who have full and complete authority to settle
this case shall personally appear and participate in good faith in this mediation,
even if no settlement is expected. However, if a non-attorney representative
requests a telephonic appearance and the mediator grants the request prior to the
mediation date, a non-attorney representative may appear telephonically.

☐ **No settlement conference or mediation:** A settlement conference or private

1 mediation is not ordered.

2
3 7. **Dispositive motions:** The parties shall file all dispositive motions by January 25,
4 2019.

5 8. **Trial setting conference:** On _____ [the court will provide this date],
6 the court will conduct a telephonic trial setting conference. Attorneys and self-
7 represented parties shall have their calendars available for the conference.

8 9. ☐ Plaintiff ☐ Defendant will initiate the conference call by arranging for the
9 presence of all other counsel and self-represented parties, and by calling this
10 division at _____ [division's telephone number] at the scheduled time.

11 10. **Firm dates:** No stipulation of the parties that alters a filing deadline or a hearing
12 date contained in this scheduling order will be effective without an order of this
13 court approving the stipulation. Dates set forth in this order that govern court filings
14 or hearings are firm dates and may be modified only with this court's consent and
15 for good cause. This court ordinarily will not consider a lack of preparation as good
16 cause.

17 11. **Further orders:** The court further orders as follows:
18 _____
19 _____

20 DATED: _____
21 _____

22 _____
23 HONORABLE CHARLES A. IRWIN
24

25 Original filed with the Clerk this 24th day of September, 2018

26 Copy mailed to:

Matthew W. Wright
Christopher Welker
WRIGHT WELKER & PAUOLE, PLC
10429 S. 51st Street, Suite 285
Phoenix, AZ 85044
Attorney for Sierra Vista Unified School District

FILED

2018 OCT -2 PM 4:48

CLERK: SP
DEPUTY: SV

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Plaintiff shall disclose the identity and opinions of experts by **September 28, 2018**.

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2 **2018.**

3 The parties shall simultaneously disclose their rebuttal expert opinions by
4 **December 14, 2018.**

5 3. ***Lay (non-expert) witness disclosure:*** The parties shall disclose all lay witnesses by
6 **October 1, 2018.**

7 4. ***Final supplemental disclosure:*** Each party shall provide final supplemental
8 disclosure by January 18, 2019. This order does not replace the parties' obligation
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10 available.

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mediation date, a non-attorney representative may appear telephonically.

☐ **No settlement conference or mediation:** A settlement conference or private

1 mediation is not ordered.

2
3 7. **Dispositive motions:** The parties shall file all dispositive motions by January 25,
4 2019.

5 8. **Trial setting conference:** On Monday, February 4, 2019 at 10:00 am
6 the court will conduct a telephonic trial setting conference. Attorneys and self-
7 represented parties shall have their calendars available for the conference.

8 9. ~~Plaintiff~~ Defendant will initiate the conference call by arranging for the
9 presence of all other counsel and self-represented parties, and by calling this
10 division at 520-807-3314 [division's telephone number] at the scheduled time.

11 10. **Firm dates:** No stipulation of the parties that alters a filing deadline or a hearing
12 date contained in this scheduling order will be effective without an order of this
13 court approving the stipulation. Dates set forth in this order that govern court filings
14 or hearings are firm dates and may be modified only with this court's consent and
15 for good cause. This court ordinarily will not consider a lack of preparation as good
16 cause.

17 11. **Further orders:** The court further orders as follows:

18
19
20
21 DATED: October 2, 2018

22
23
24
25
26

HONORABLE CHARLES A. IRWIN

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Copy mailed to:

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Christopher Welker
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